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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-fifth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 10th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 27 April 2001, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

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* No summary record was prepared for the first part (closed) of the meeting.

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The meeting was called to order at 3 p.m.

The second part (public) of the meeting was called to order at 4.05 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of China: Hong Kong Special Administrative Region (continued) (E/1990/5/Add.43; E/C.12/Q/HKSAR; E/C.12/CA/HKSAR; written replies to the list of issues prepared by the Government of China: Hong Kong Special Administrative Region (document without a reference number); HRI/CORE/1/Add.21/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of China: Hong Kong Special Administrative Region (HKSAR) resumed their places at the Committee table.

2. The CHAIRPERSON invited the delegation to reply to the questions left pending on articles 2-7 of the Covenant.

3. Mr. LAM (China: Hong Kong Special Administrative Region) said Hong Kong as yet had no anti-racial discrimination law, but comprehensive consultations were shortly to be arranged on the issue in the Legislative Council, with the participation of non-governmental organizations (NGOs). However, given the fierce opposition to the adoption of such a law, the authorities favoured the course of dialogue. Since discrimination based on sexual preference - having to do with the essential moral values handed down by society - was a highly sensitive topic, no further public consultations on the matter were envisaged for the time being.

4. Mr. ALLCOCK (China: Hong Kong Special Administrative Region), replying to a question on Hong Kong's possible accession to the Convention relating to the Status of Refugees, explained that while the HKSAR concurred on the spirit of that instrument, its special situation made accession difficult. The territory's economic prosperity would almost certainly attract hordes of asylum-seekers and could lead to abuses. Over a quarter of a century Hong Kong had taken in some 200,000 Vietnamese refugees on humanitarian grounds, and over 140,000 of them had subsequently resettled abroad.

5. Turning to possible discriminatory acts concerning the right of abode, of which children born in mainland China might be victims, he explained that the Immigration Ordinance provided that the right of abode in the HKSAR was accorded any Chinese national, born in mainland China or elsewhere, provided that one parent was a Chinese national residing permanently in Hong Kong. Before being allowed into the territory, persons born in mainland China and claiming the right of abode in the HKSAR must procure an affidavit attesting to that right and a travel document issued by the mainland Chinese authorities: 700,000 residence authorizations had been issued prior to the return of Hong Kong to China and 2,000 subsequently. The

establishment of that mechanism was justified by the very large number of children born in mainland China of parents residing permanently in Hong Kong and by the territory's demographic problems.

6. The allegedly discriminatory recruitment policy pursued by the Fire Services and Customs and Excise Departments, namely, the ban on recruitment of relatives of the mentally disabled, no longer applied in view of the Disability Discrimination Ordinance and in the wake of a judicial ruling ordering its discontinuance.

7. Mr. LAM (China: Hong Kong Special Administrative Region) said laws designed to protect workers had been passed, but that any improvement of the legislation in that field must take account of the local economic situation. For many years NGOs and trade unions had been pressing for legislation on a minimum wage and statutory maximum working hours. As it was, Hong Kong owed its prosperity throughout the second half of the twentieth century to its extremely flexible labour market, and although workers had certainly suffered from that policy in 1999 and 2000, they too had enjoyed the fruits of economic growth. While the issue of a fixed minimum wage and legal maximum working time was still topical, the Government considered it impolitic to legislate on the matter for the time being, in view of the Asian financial crisis that had shaken the territory's economy.

8. Ms. NG (China: Hong Kong Special Administrative Region), replying to a question on the unemployment rate, said it had been relatively low - between 2 and 3 per cent - before the 1997 Asian financial crisis. In 1999 it had reached a record 6.3 per cent, which, however, was still reasonable compared with unemployment rates in Europe and Latin America. It had stood at 4.5 per cent during the first quarter of 2001. Although everything pointed to a rise in workers' incomes since the Asian financial crisis, the Government's absolute priority was to combat unemployment. A high-level expert group formed in 1998 had studied possible ways of reducing unemployment and boosting the economy. Chaired by the Financial Secretary and composed of academics, members of trade unions and employers, the group had compiled a list of some 40 measures, including continued training and job programmes for young people. Since unskilled workers were the hardest hit by unemployment, the Government had recently earmarked $400 million for a worker-training programme, which should benefit 50,000 unskilled workers, since projections had shown that there would be some 150,000 surplus unskilled workers on the labour market by 2005.

9. During the fourth quarter of 2000 wage-earners in the Hong Kong Special Administrative Region had worked an average of 48 hours a week, or approximately 8.7 hours a day, over five and one half days. While those figures were high compared to those of the market-economy countries that had opted for shorter working hours, they were within the average range for most Asian countries. The authorities believed that, as with wages, the number of hours worked should be negotiated on an individual basis between employer and employee. The Government was currently investigating practice in that field with a view to regulating that aspect of labour. It would furnish the Committee with additional information on the topic in due course. In the event of abuses, the Labour Department prosecuted the delinquent employer.

10. The workforce was an important feature of Hong Kong, being that entirely outward-looking economy's sole resource. It must be capable of adapting if it was to react

promptly to fluctuations in job supply and demand in a changing economic environment. In order to help employees remain competitive and to permit them to re-enter the labour market in the event of dismissal, the authorities emphasized programmes of training and upgrading, which, in their view, had the advantage of affording wage-earners more protection than would a minimum wage. The one exception to that rule was the fixed minimum monthly wage of US$ 470 for foreign domestic workers; the purpose of that provision, which was subject to annual review in the light of the economic situation, was to protect that category of highly vulnerable workers from exploitation. Labour law also guaranteed those domestic workers the same rights as local workers, except that they were not allowed to change jobs as they pleased.

11. New provisions had been inserted in the Employment Ordinance, authorizing wage-earners to file complaints against their employers if they felt they had been unfairly dismissed. The Labour Tribunal could then order the worker's reinstatement, or sentence the employer to pay compensation for dismissal, or even damages of up to HK$ 150,000. In conclusion, the law treated any dismissal on grounds of trade-union membership as a punishable violation.

12. Ms. WONG (China: Hong Kong Special Administrative Region) said that, on the recommendation of the Committee on the Elimination of Discrimination against Women, the HKSAR had established a Women's Commission to develop a long-term strategy for the development and advancement of women, to advise the Government on relevant issues and to enable women fully to realize their human rights in all aspects of life. To that end, the Commission's work focused on five major areas, namely strategic planning, advisory services, education, liaison and research. An independent advisory body, the Commission had 23 members, 5 of them very senior officials serving ex officio to render Government support to the Commission's work. The other members came from a wide range of backgrounds and all had extensive experience in the field. The Commission was also assisted by the Equal Opportunities Commission, responsible for promoting equal opportunities for men and women.

13. Mr. LAM (China: Hong Kong Special Administrative Region) said the authorities were well aware of the importance of enforcing the principle of "equal pay for work of equal value" and that many studies on the subject had been conducted to that end. Although the Equal Opportunities Commission endeavoured to sensitize employers to that principle, it was an area in which it was difficult to legislate. The Sex Discrimination Ordinance was a first step in that direction, banning as it did all such acts in any field whatsoever, including that of employment. He recognized that, as had been suggested, it would indeed be judicious to have a law dealing exclusively with discrimination in employment.

14. Mr. GRISSA asked the delegation for additional information on the question of foreign domestic workers. What did US$ 460 represent on the local market and how much did local staff doing the same job earn? If foreign employees could not change jobs, what happened to them when they were dismissed or their contract expired? Were they expelled from Hong Kong? Could they claim social security or seek reimbursement of pension contributions? Were their rights protected?

15. Mr. AHMED, basing his remarks on information provided by the Equal Opportunities Commission, said many women had lost their jobs as a result of the relocation of businesses to

the neighbouring mainland. Heads of businesses also took steps to cut wage costs, including recruitment of mostly female part-time staff. The wage policy overtly discriminated against such employees: women earned 77 per cent of men's pay for work of equal value, with the 45-49 age group earning as little as 58 per cent. He had it on good authority that the Commission had been criticized for its passivity and its propensity to promote conciliation over judicial action when the latter would appear to be indicated. Could the Government not be a little more resolute in its fight against sex discrimination?

16. Mr. TEXIER remarked that, where hours worked were concerned, it was important for the Committee to learn not so much the average number of hours worked by Hong Kong wage-earners but the bases on which that average was calculated, so as to underscore abuses. For if legislation in that area was necessary, it was partly because safety considerations dictated the importance of not exceeding a certain number of hours per day and per week, and because overtime needed to be remunerated at a higher rate, ranging from 25 per cent to 50 per cent of the hourly rate, depending on the number of hours involved.

17. With regard to discriminatory dismissals, it would appear that despite the provisions authorizing wage-earners to seek redress in the courts, none had ever won such a case, owing to lack of evidence. A law recently enacted in France concerning discrimination on the grounds of trade-union activities, and discrimination against women had reversed the burden of proof: the onus was no longer on workers to prove that they had been discriminated against, but on the employer to prove that no discriminatory subterfuge had been used. Could the Hong Kong Special Administrative Region perhaps emulate that law?

18. Mr. HUNT said he was deeply disappointed at the Hong Kong authorities' failure to make a firm commitment to ban racial discrimination in the private sector. At the dawn of the twenty-first century and, more particularly, only months away from the World Conference Against Racism, such a commitment was hardly an unreasonable expectation, in view of Hong Kong's obligations under international law in general and the Covenant in particular.

19. Mr. MARTYNOV pointed out that, according to the delegation, the average working week was 40 hours. However, the document submitted by the trade unions showed that in the last quarter of 2000 over 600,000 employees, in other words 20 per cent of the active population, had worked at least 60 hours a week. Could the delegation explain the discrepancy? He had also heard that the expulsion of foreign workers from Hong Kong once they had lost their jobs deterred them from lodging an official complaint in the event that their rights had been violated. Had the Government put in place an oversight and inspection system to ensure respect for the rights of such workers? Lastly, some employees on permanent contract allegedly worked weeks on end without a rest day, in contravention of the Employment Ordinance. Did the Government have the means to verify those allegations and the will to take the necessary measures?

20. The CHAIRPERSON, speaking as a member of the Committee, said she understood that the Women's Commission was to be placed under the aegis of the Department of Health and Social Welfare, a move that could cast doubt on its independence. Moreover, in her statement on that Commission Ms. Wong had spoken a great deal about activities, but not enough about

orientation. More than activities, what Hong Kong women needed was an improvement in their status and greater participation in decision-making concerning them. The Commission must not be a mere figurehead, as was the case in other countries.

21. Ms. WONG (China: Hong Kong Special Administrative Region) explained that one of the Commission's tasks was precisely to ensure that women's views were taken into account in the framing of all policies concerning them. The Commission was also responsible for promoting women's rights, a task it performed with total independence. The Department of Health and Social Welfare would simply provide the Commission with secretariat services, an arrangement that existed in other fields and had always been entirely satisfactory.

22. Mr. LAM (China: Hong Kong Special Administrative Region) said he understood Mr. Hunt's disappointment but assured him that there was a real will to go forward with the fight against racial discrimination in the private sector. However, the authorities could not legislate against the public's wishes. It was better to begin by convincing public opinion that a change of attitude was needed and to go on from there to enact the relevant laws.

23. Ms. NG (China: Hong Kong Special Administrative Region) pointed out that the minimum wage of foreign domestic workers was HK$ 3,860, or about US$ 470, approximately two thirds the wage of their local counterparts. It should be noted, however, that employers were also required to provide board and lodging for their foreign domestic staff and subsidize their medical expenses. The Government reviewed the minimum wage each year and decided whether it needed to be adjusted.

24. Concerning the fate of foreigners who lost their jobs, she stressed that the policy on the admission of foreign workers and domestic staff into Hong Kong showed the Government's will to protect local jobs. Foreigners were allowed into Hong Kong to perform specific jobs and could not change employers without approval from the immigration authorities. If they felt they were exploited or their rights were violated they could apply to the immigration authorities for an extension of their stay. In any event, the labour legislation afforded foreign domestic workers the same protection as locals. In that connection, the Labour Department had installed a hotline that foreign workers could use to obtain information or to complain about any violation of their rights.

25. Regarding the length of working hours, she did not challenge the figures provided by the NGOs, but insisted that the average for the fourth quarter of 2000 had been 48 hours a week, which was close to the averages for other Asian countries. Also, it was for the employer and employee to negotiate a special overtime bonus. With regard to part-time work, a Government study conducted early in 1999 had shown that there were 30,000 part-time employees - people working fewer than 18 hours a week - or about 1 per cent of all wage-earners. Aware of the upward trend in the number of part-time workers, the Government was carefully monitoring the situation in an effort to protect employee interests.

26. Mr. MARTYNOV said he was pleased to note that the Government was endeavouring to fill the gaps in legislation which allowed employers to bend the rules by excessive recourse to

part-time employment. However, there remained the question of the violation of the right of workers to a mandatory rest period and, in that regard, a mandatory overtime bonus would be an effective solujtion.

Articles 8, 9 and 10 of the Covenant

27. The CHAIRPERSON invited Committee members to put their questions concerning articles 8, 9 and 10 of the Covenant.

28. Mr. WIMER ZAMBRANO asked whether, like the "one country, two systems" principle, it would not be equally valid to talk of "one country, two types of trade union". In that connection, what legal and practical relations did Hong Kong trade unions maintain with those in other countries and in China in particular?

29. Mr. TEXIER said that, in preparation for Hong Kong's return to China, laws providing a juridical framework satisfactory to the trade unions and bringing Hong Kong legislation into line with the ILO Conventions had been adopted in April 1997. However, on 29 October 1997 the Provisional Legislative Council had repealed the most important clauses of those laws, reverting to the previous legislation, which had been fiercely criticized by ILO. The repealed provisions concerned recognition of the right to collective bargaining and the right of trade unions to be consulted, as well as the right to reinstatement of workers dismissed on the grounds of their trade union activities. Although improvements had since been made, the legal provisions relating to collective bargaining neither met ILO expectations nor were in keeping with the spirit of article 8 of the Covenant. While the Basic Law protected the right to strike, no text actually guaranteed its effective exercise if an employee could still be dismissed for going on strike. In those circumstances, could the delegation maintain that the administration respected the ILO Convention on freedom of association and article 8 of the Covenant?

30. Mr. MARCHÁN ROMERO said he would like to know whether domestic workers were in fact excluded from the new compulsory social welfare scheme that had come into effect in December 2000. If so, were they covered by any other social security scheme? What happened to the elderly and the disabled?

31. Mr. HUNT asked whether persons who had been refused the right of abode could appeal. Would it be possible to publish, on a regular basis, information on the place of origin of mainland Chinese granted the right of abode under article 24 of the Basic Law?

32. Mr. RIEDEL said that a ban on abode for at least eight years after marriage, which affected wives from mainland China, contravened article 10, paragraph 3, of the Covenant. Children who, were it not for that ban, would be born in Hong Kong came into the world on the mainland and as a result were subsequently refused the right of abode. Given the low birth rate in Hong Kong, would it not be wise to review that policy? He referred in particular to 3,700 children with permanent residence status, whose right of abode had been recognized in June 1999.

33. Mr. HUNT asked how many children with permanent residence status who had gone to Hong Kong before June 1999 for purposes of family reunification would also be granted the right of abode.

34. Mr. ATANGANA asked the delegation to cite specific cases in which victims of domestic violence had brought an action against their spouses in the courts. Also, what were the main causes of suicide among minors and what methods did they use?

35. The CHAIRPERSON, speaking as a Committee member, expressed dismay that the Department of Health and Social Welfare, on which the Women's Commission depended, was also responsible for the Commission for the Elderly and the Youth Commission. She doubted whether the Commission's action could be very effective given the many problems with which the other two Commissions were faced. She wished to know what was specifically being done to curb the alarming increase in the child suicide rate and the growing number of cases of child abuse, especially sexual abuse. Regarding the status of women, it was important to adopt a more comprehensive approach to gender-equality issues than simply asking women about their problems.

36. Ms. NG (China: Hong Kong Special Administrative Region) replied that the Hong Kong trade unions were free to join international confederations, but that the authorities possessed no statistics or detailed information on how many had done so. Regarding labour legislation, the three ordinances that had been hastily passed prior to Hong Kong's return to China had been repealed by the Government after their examination by the tripartite Labour Advisory Board. New legislation had been adopted, containing those provisions not rejected by the Board. Establishment of a compulsory collective bargaining system was still a highly controversial issue in Hong Kong. In 1999 the Legislative Council had rejected a proposal along those lines. Concerning the right to strike, guaranteed by the Basic Law, the amendment to the Labour Ordinance approved in 2000 clearly stipulated that striking could not serve as grounds for dismissal.

37. She confirmed that domestic workers were not covered by the new social welfare scheme that had come into effect in December 2000. The authorities believed that to extend the scheme to domestic staff would give rise to administrative problems, particularly since the workplace was the employer's home. Nevertheless, they had already made known their intention to review the functioning of the system within a year or two and, if necessary, to enable other categories such as domestic employees to join it.

38. Ms. WONG (China: Hong Kong Special Administrative Region) said that the Women's Commission had been created only in January 2001 and that all Committee members' suggestions designed to assist it to accomplish its task were welcome. The Commission was supposed to ensure that women's concerns were taken into account in the framing of policies and laws. It was currently drawing up a list of questions which all Government offices and departments would be required to answer when they came to formulate their policies, which would require a good understanding of gender-equality issues on the part of those responsible. To that end, it was collaborating with a local research centre on the subject in order to familiarize officials with those questions. It was working on producing data disaggregated by gender.

The meeting rose at 6 p.m.